

## **REMARKS/ARGUMENTS**

Claims 1-24 were previously pending in the application. Claims 2, 4, 10, 12, and 21 are canceled; claims 1, 5, 7-9, 11, 14-18, 20, and 23-24 are amended; and new claim 25 is added herein. Assuming the entry of this amendment, claims 1, 3, 5-9, 11, 13-20, and 22-25 are now pending in the application. The Applicant hereby requests further examination and reconsideration of the application in view of the foregoing amendments and these remarks/arguments.

### **Drawings:**

In paragraph 1 of the office action, the Examiner objected to the drawings for not showing the two different decision threshold values recited in claims 5 and 19. In response, the Applicant submits herewith a Transmittal of Corrected Drawing amending Fig. 6 to show “threshold 1” and “threshold 2” as suggested by the Examiner.

### **Claims:**

In paragraph 4, the Examiner rejected claims 1-2, 7, 9, 11-12, 14, 16, 18, and 20-22 under 35 U.S.C. § 102(a) and (e) as being anticipated by Moeller. In paragraph 7, the Examiner rejected claims 3-5, 8, 10, 15, 17, 19, and 23-24 under 35 U.S.C. § 103(a) as being unpatentable over Moeller. In paragraph 8, the Examiner rejected claims 6 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Moeller in view of Yonenaga. For the following reasons, the Applicant submits that all pending claims are allowable over the cited references.

The rejections of (i) claims 3-5, 8, 10, 15, 17, 19, and 23-24 under 35 U.S.C. § 103(a) as being unpatentable over Moeller and (ii) claims 6 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Moeller in view of Yonenaga are improper because Moeller and the claimed invention were commonly owned by Lucent Technologies, Inc., at the time the claimed invention was made or subject to an obligation of assignment that would establish common ownership. As such, Moeller is not a proper prior-art reference (see 35 U.S.C. § 103(c) and MPEP 706.02(I)).

Since claim 1 is amended to incorporate some of the limitations recited in original claims 2 and 4 (now canceled), and claims 11 and 20 are amended similar to claim 1, it is submitted that the rejections of claims 1, 11, and 20 under 35 U.S.C. § 103(a) have been overcome.

Support for new claim 25 can be found, e.g., in original claims 18-19. Since claims 3, 5-9, 13-19, and 22-25 depend variously from claims 1, 11, and 20, it is submitted that all these claims are also allowable over the cited references.

### **Double Patenting:**

In paragraph 10, the Examiner provisionally rejected claims 1, 9, 11, 16, and 18-20 on the ground of nonstatutory obviousness-type double patenting over claims 1, 14, 23, and 25-27 of co-pending Application No. 10/827,824. In response, the Applicants submit that the amendment of independent claim 1 overcomes the double-patenting rejection because amended claim 1 now recites some of the limitations of original claims 2 and 4, which were not subject to the double-patenting rejection. For similar reasons, it is submitted that the amendments of independent claims 11 and 20 overcome the double-patenting rejection of those claims. Since claims 9, 16, and 18-19 depend variously from independent claims 1 and 11, it is further submitted that the double-patenting rejection of those claims is also overcome.

In view of the above amendments and remarks, the Applicant believes that the now-pending claims are in condition for allowance. Therefore, the Applicant believes that the entire application is now in condition for allowance, and early and favorable action is respectfully solicited.

Respectfully submitted,

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